on the part of the defendants, who as champions for the landless, had embarked on the housing scheme to better the lot of their own community.

As there were no concrete and tangible reasons given why the injunction should be set aside, I had accordingly dismissed the defendants' application with costs.

Order accordingly.

Solicitors: *Vadiveloo & Co*; *Richard Ho*.

Reported by *Gabriel Sebastian*

Public Prosecutor v Ng Chong Wan

HIGH COURT (KUALA LUMPUR) – FEDERAL TERRITORY CRIMINAL APPEAL NO CR 52-50 OF 1986
ZAKARIA YATIM J
5 DECEMBER 1987

Criminal Procedure – Sentencing – Seven years' imprisonment and six strokes of whipping for possession of revolver – Five years' imprisonment for possession of ten rounds of ammunition – Concurrent sentences imposed – Whether sentences inadequate – Whether consecutive sentences should be imposed – Principles applicable – Firearms (Increased Penalties) Act 1971, s 8 – Arms Act 1960 (1978 Revised), s 8(a)

The respondent pleaded guilty to the offences of possession of a revolver and ten rounds of ammunition. The offences were punishable under s 8 of the Firearms (Increased Penalties) Act 1971 and s 8(a) of the Arms Act 1960 (1978 Revised) respectively. The trial court sentenced him to seven years' imprisonment and six strokes of whipping for the first offence and five years' imprisonment for the second offence, both sentences to run concurrently. The Public Prosecutor appealed against the sentences imposed, contending that they were manifestly inadequate and that the sentences should be made consecutive.

Held, dismissing the appeal: (1) The court will only interfere with the sentences if the court below had erred in principle or when there was a failure to apply the right principles when passing the sentences.

(2) When considering what should be the proper sentences in cases of possession of firearms and ammunition, the court has to bear in mind that public interest should be protected.

(3) The trial court took into account the public interest and applied the deterrent principle. It had applied the right principle. It was not wrong in law when it ordered the sentences to run concurrently.

Cases referred to
1 *Abu Bakar bin Alif* v *R* [1953] MLJ 19 (folld)
2 *PP* v *Fam Kim Hock* [1957] MLJ 20 (folld)
3 *PP* v *Teh Ah Cheng* [1976] 2 MLJ 186 (folld)
4 *PP* v *Chung Kwong Huah* [1981] 1 MLJ 316 (folld)
5 *Lee Chow Meng* v *PP* [1976] 1 MLJ 287 (folld)

Legislation referred to
Arms Act 1960 (1978 Revised) ss 8(a), 9(a)
Firearms (Increased Penalties) Act 1971 s 8

C W Chan for the respondent.
Ng Aik Guan (Deputy Public Prosecutor) for the Public Prosecutor.

Cur Adv Vult

Zakaria Yatim J: The respondent was charged in the Sessions Court for possession of a Smith & Wesson .38 special revolver, an offence punishable under s 8 of the Firearms (Increased Penalties) Act 1971. He was also charged for possession of ten rounds of .38 special revolver ammunition, an offence punishable under s 8(a) of the Arms Act 1960 (1978 Revised).

The respondent pleaded guilty to both charges. On the first charge, he was sentenced to seven years' imprisonment and six strokes of whipping. On the second charge, he was sentenced to five years' imprisonment with effect from the date of arrest. Both sentences were to run concurrently.

The Public Prosecutor was dissatisfied with the sentences passed by the president and appealed to this court against both sentences. The deputy public prosecutor in his submission told the court that the sentences were 'manifestly inadequate and inappropriate'. According to him, the respondent had one previous conviction for receiving stolen property. The learned deputy urged the court to enhance the sentences or, alternatively, the two sentences be made consecutive.

The first point to consider is whether the court should interfere with the sentences passed by the court below. The court will only interfere with the sentences if the court below had erred in principle or when there was a failure to apply the right principles when passing the sentences: see *Abu Bakar bin Alif* v *R*.[1] The court may also interfere with the sentences if the sentences are unsuitable to the proved facts and circumstances: see *PP* v *Fam Kim Hock*.[2]

The courts in this country view offences of possession of firearms and ammunition very seriously. In *PP* v *Teh Ah Cheng*[3] Abdoolcader J, as he then was, expressed the view of the court in the following words:

> It is my view that particularly in these times where the unlawful possession and use of firearms is rampant and ever increasing, a custodial sentence at the very least, of a term commensurate with the circumstances of the case, is called for ... The courts may not perhaps have to wholly reflect public opinion but they certainly must not be indifferent or disregard it, and it must be made abundantly clear that in the light of the appalling increase in crimes involving violence and the unlawful possession and use of lethal weapons, society is crying out 'enough is enough' and is no longer in any mood to tolerate such offenders who like serpents in the front lawn of justice disrupt law and order. So be it clearly made known that the forces of justice will be vigorously brought to bear upon these engineers of evil who must be made to realize that if they indulge violence or arm themselves with weapons of violence they will lose their liberty ...

In *PP* v *Chung Kwong Huah*[4] Chan J said:

> The man who carries a gun has the capacity to use it for it is all too easy to translate from mere possession into actual use with disastrous results.

In *Lee Chow Meng* v *PP* [5] Abdul Hamid J, as he then was, said:

> I would say that it is common knowledge that, of late, commission of offences involving firearms has been prevalent in Kuala Lumpur and I think the court is entitled to take judicial notice of that fact.

In my opinion, when considering what should be the proper sentences in cases of possession of firearms and ammunition, the court has to bear in mind that public interest should be protected. The only way to protect the public interest is to impose deterrent sentences. In *Teh Ah Cheng*[3] Abdoolcader J took into account the element of public interest in considering sentence. He also took into account the preventive principle. In *Chung Kwong Huah*,[4] Chan J also took into consideration the deterrent principle. The learned judge also applied the retribution principle. Similarly in *Lee Chow Meng*,[5] Abdul Hamid J also took public interest into account.

The learned president in his grounds of judgment took into account the public interest and applied the deterrent principle. In my view, he has applied the right principle. The question is whether the sentences passed by him were manifestly inadequate and inappropriate as alleged by the learned deputy.

In *Teh Ah Cheng*[3] the respondent pleaded guilty to two charges of unlawful possession of an automatic pistol and six rounds of ammunition under the Arms Act 1960. Abdoolcader J sentenced him to three years' imprisonment in respect of each charge. In *Chung Kwong Huah*[4] Chan J sentenced the accused to ten years' imprisonment and six strokes for possession of a Smith & Wesson .32 revolver under the Firearms (Increased Penalties) Act 1971. For possession of six rounds of ammunition, he sentenced the accused to three years' imprisonment. In *Lee Chow Meng*,[5] Abdul Hamid J confirmed the sentence of ten years' imprisonment and six strokes passed by the Sessions Court for unlawful possession of an automatic pistol punishable under s 8 of the Firearms (Increased Penalties) Act; and a sentence of seven years' imprisonment for unlawful possession of 30 rounds of ammunition punishable under s 9(a) of the Arms Act 1960. It should be noted that in *Lee Chow Meng's* case[5] robbery was committed and the firearm was used in the course of the robbery. In the circumstances, the sentences of ten years' imprisonment and six strokes and seven years' imprisonment were justified.

In the present case, the offences committed were mere possession of the firearm and ammunition. There is no evidence that he used the gun to commit an offence. He pleaded guilty to both charges in the Sessions Court. Considering all the facts and circumstances in this case, I think the sentences passed by the learned president should not be disturbed.

One last point to consider: Whether the sentences should run concurrently or consecutively. In both *Teh Ah Cheng*[3] and *Chung Kwong Huah*,[4] sentences were ordered to run concurrently. In *Lee Chow Meng*,[5] Abdul Hamid J ordered the sentences to run consecutively but as already pointed out, in that case, the gun was used to commit robbery.

In my opinion, the president was not wrong in law when he ordered the sentences to run concurrently. For the reasons stated above, I dismiss the appeal and confirm the sentences passed by the learned president.

Appeal dismissed.

Solicitors: *Mian Lee & Partners.*

Reported by *Ng Sheau Jiuan*

Yong Yin Siew v Chong Sheak Thow

HIGH COURT (ALOR SETAR) – CIVIL SUIT NO 298 OF 1975
MUSTAPHA HUSSAIN J
1 DECEMBER 1987

Chinese Law and Custom – Surname or 'seh' – Change of – Re-marriage of widow

Evidence – Expert – Evidence Act 1950, ss 48-51

Civil Procedure – Conduct of proceedings – Observations on

The plaintiff and the defendant each claimed to be the descendant and beneficiary of the deceased, the original owner of a piece of land in Kuala Perlis. On the evidence adduced, the court found that the defendant was in no way related to the deceased, and gave judgment for the plaintiff.

In the course of the trial, an expert on matters of Chinese customs and traditions was called to give evidence on the import of a Chinese surname or 'seh'. The court accepted evidence that under Chinese customs and traditions, the surname or 'seh' is the perpetuation of a Chinese family, the sons and daughters taking on the surname and the children of the sons will continue to have the surname, especially along the male line. If a Chinese changes his surname, he will be treated as an outcast; he passes out of the family line and he loses all rights of inheritance and succession. If a widow who has sons by her deceased husband re-marries, she should leave the sons with the family of the deceased husband. If she takes the sons along to her new husband's house, the surname of her son cannot be changed to that of the stepfather's.

[*Editorial Note*: The defendant has appealed to the Supreme Court vide Supreme Court Civil Appeal No 550 of 1987.]

Legislation referred to
Evidence Act 1950 ss 48-51

E Mayandi for the plaintiff.
Tan Beng Hong for the defendant.

Cur Adv Vult